IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1957 OF 2006,
CRIMINAL WRIT PETITION NO.1958 OF 2006,
CRIMINAL WRIT PETITION NO.1959 OF 2006,
CRIMINAL WRIT PETITION NO.1960 OF 2006

Vijaykumar ...Petitioner
(in all these Petitions)

vs.

Fortis Financial Services
Ltd. and another ...Respondents
(in all these Petitions)

Mr.S.V.Marwadi for the Petitioner
Mr.S.R.Shinde A.P.P. in W.P.No.1957/2006
Mr.Rajesh More,A.P.P.in W.P.No.1958/2006
Mr.A.S.Shitole,A.P.P.in W.P.No.1959/2006
Ms S.V.Gajare,A.P.P. in W.P.No.1960/2006

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 19,2006.

P.C.:

1. Heard Shri Marwadi appearing for the Petitioner in these Petitions. The controversy involved in all these Petitions is identical and therefore reference is made to the facts of the case in Writ Petition No.1957 of 2006.

2. The Petitioner is arraigned as an accused in a private complaint filed by the first Respondent under section 138 of the Negotiable Instruments Act, 1881. The first Respondent filed an Affidavit of evidence of one Shri Atmaram Laxman More. The substantive prayer in this Petition reads thus :

"b) by issuing appropriate writ, order and direction it may be held that the Affidavit filed by the first Respondent through Mr.Atmaram Laxman More in

C.C.No.4407/S/2002 pending on the file of the Ld.Special Metropolitan Magistrate, Small Causes Court, Mumbai is bad, illegal and therefore, liable to be quashed and set aside."

3. Shri Marwadi, learned Counsel for the Petitioner submitted that the deponent Atmaram Laxman More is having no knowledge of the facts giving rise to the filing of the complaint. He submitted that the evidence of the said witness will be completely hearsay evidence and therefore, Affidavit of evidence of the said witness could not have been taken on record. He submitted that the said witness has been subsequently employed by the first Respondent and therefore, he cannot prove any document. Therefore, prayer in the Petition is that Affidavit of evidence filed by the Respondent of the said Shri Atmaram Laxman More is bad in law.

4. This Petition has been filed under Article 227 of Constitution of India read with section 482 of the Code of Criminal Procedure, 1973. The remedy under Article 227 of Constitution of India is an extraordinary remedy which cannot be resorted to as a matter of course. The power of the High Court under section 482 of the said Code has to be used sparingly and only in extraordinary cases.

5. As of today the first Respondent has filed an Affidavit of evidence of the said Atmaram Laxman More. Whether the

evidence of the said witness is hearsay and whether the documents which are sought to be produced by the first Respondent can be proved by the said witness are the questions which are required to be decided by the Trial Court. The Petitioner is free to agitate the said questions before the learned Magistrate at the appropriate stage.

6. In the circumstances, Petitions cannot be entertained. Hence, Petitions are rejected by keeping all the questions which are raised in the Petitions expressly open.

JUDGE